

**BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION**

**Katie Sieben
Valerie Means
Matt Schuerger
Joseph Sullivan
John Tuma**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**Complainant,
Association of Freeborn County Landowners**

v.

**Respondent,
Chair/Commissioner Katie Sieben**

and

**Respondent,
Commissioner John Tuma**

**COMPLAINT OF VIOLATION
OF COMMISSIONERS'
CODE OF CONDUCT**

**Agenda Meeting:
July 16, 2020**

**Freeborn Wind, LLC
PUC Docket:
IP6946/WS-17-410**

Association of Freeborn County Landowners (hereinafter “AFCL”) brings this complaint as provided by Minn. Stat. §216A.037, Subd. 4, and those Code of Conduct rules promulgated, specifically, Minn. R. 7845.0400 Subp. 2 (B), (D), and (F); 7845.0600, Subp. 1 (A) and (C); and 7854.7200, Subp. 1(A), with concurrent violation of Minn. Stat. §216E.08, Subd. 2. The bulk of this Complaint focuses on Commissioner Tuma’s proffering of a “Decision Option,” alternately referred to as a Motion, for the July 16, 2020 Commission Agenda meeting the afternoon before the meeting; a “Decision Option” unrelated to the narrow Freeborn Wind agenda item. Secondly is Chair Sieben’s enabling, as Chair, by putting it on the table and holding an improper

discussion, without sufficient notice to parties and without allowing party participation or even inquiring if affected parties were present (they weren't), exacerbated by the Webex remote nature of the meeting where access was gated by PUC staff and it was impossible to physically stand up and object. Thirdly, the Commission erred in failing to address AFCL's filed and pending Notice of Motion and Motion for Order to Show Cause, instead raising issues addressed in Xcel Energy's Reply to this Motion, referring to it as a "letter" with no opportunity of movant AFCL to address the issues raised.

AFCL is filing this Complaint with the Commission and all parties on the service list for Freeborn Wind via eDockets, with copies mailed to Chair Sieben, Commissioner Tuma, Department of Commerce, and the Office of the Attorney General, as required by Minn. Stat. §216A.037, Subd. 4(c). AFCL notes that a Complaint shall be referred to the Office of Administrative Hearings for an investigation and report. Minn. Stat. §216A.037, Subd. 4(e), (f).

This Complaint regarding Chair Sieben focuses on several issues, including the Chair's inviting Commissioner Tuma's Motion for discussion, unrelated to the narrow landowner permit amendment request noticed and on the agenda and which failed to comply with Notice and Service provisions of Minn. R. 7829.0410 and Minn. R. 7829.2800; and by giving preferential treatment to an entity, Freeborn Wind/NSP/Xcel Energy, to the detriment of an intervenor party and local governments with an interest; thereby losing independence or impartiality of action. Minn. R. 7845.0400. Chair Sieben also displayed an apparent personal bias concerning a party, and an apparent interest, other than that of the general public, that could be substantially affected by the outcome of the proceeding. Minn. R. 7845.0600. Due to insufficient notice and service, because parties were excluded from participating, and because the matter is directly related to an AFCL Motion for Order to Show Cause pending before the Commission, and the lengthy

discussion with just one party, this is also a Complaint of ex parte communication. Minn. R. 7845.7000; Minn. R. 7200, Subp. 1(A).

AFCL's Complaint against Commissioner Tuma also focuses on several issues, including failure to comply with Notice and Service provisions of Minn. R. 7829.0410 and Minn. R. 7829.2800. Commissioner Tuma also made demonstrably false statements to the Commission regarding an attorney's statement of representation, and another regarding the County's use of Freeborn Wind revenue for COVID business recovery. Minn. R. 7829.0250. Commissioner Tuma gave apparently preferential treatment to an entity, Freeborn Wind/NSP/Xcel Energy, to the detriment of parties and local governments with an interest and through which, losing independence or impartiality of action. Minn. R. 7845.0400. Commissioner Tuma also displayed an apparent personal bias concerning a party, and an apparent interest, other than that of the general public, that could be substantially affected by the outcome of the proceeding. Minn. R. 7845.060. Due to insufficient notice and service, and because the matter is directly related to an AFCL Motion for Order to Show Cause pending before the Commission, the lengthy discussion with just one party, and because the matter is directly related to an AFCL Motion for Order to Show Cause pending before the Commission, this is also a Complaint of ex parte communication. Commissioner Tuma also made reference to having personally gone down to the project area and driving the roads in question, and referred to county use of wind project revenue for COVID business recovery program, information not in the record, and it appears that the Commissioner may have had improper contact with County officials or project representatives off the record. Minn. R. 7845.7000; Minn. R. 7200, Subp. 1(A).

Both Chair Sieben and Commissioner Tuma displayed flagrant indifference for the parties and local governments with an interest in this "Motion" and did nothing to include or

even inquire as to whether parties and affected local governments were on the call, affecting adversely the confidence of the public in the integrity of the Commission, and a blatant disregard for the Commission’s “broad spectrum citizen participation as a principal of operation.” Minn. R. 7845.0400; Minn. Stat. §216E.08, Subd. 2¹. Both Chair Sieben’s and Commissioner Tuma’s actions had the appearance of impropriety, affecting adversely the confidence of the public in the integrity of the commission. Minn. R. 7845.0400, Subp. 2.

AFCL is seeking sanctions as provided by Minn. Stat. §15.0575, Subd. 4 and Minn. R. 7845.1000, Subp. 1, specifically that both Chair Sieben and Commissioner Tuma be censured for raising and discussing this Motion without proper notice and service, for bringing to the table an item not on the agenda and unrelated to the docket’s agenda issue, without parties and affected local governments present, and with no opportunity to participate. AFCL is seeking a recommendation of the Administrative Law Judge that AFCL’s Motion for Order to Show Cause be granted and that Freeborn Wind/NSP/Xcel Energy be required to submit a stand-alone Application for Permit Amendment in the Freeborn Wind siting docket. Minn. Stat. §216A.037, Subd. 4(h)(2); see PUC Docket IP6946/WS-17-410; see also Order, June 22, 2020, Three Waters Wind, Ordering stand-alone Application for Permit Amendment.

I. INTRODUCTION

Any person seeking sanctions for alleged violations of the rules adopted under this section may file a complaint with the Commission. Minn. Stat. §216A.037, Subd. 4.

The Complainant:

Association of Freeborn County Landowners
c/o Dorenne Hansen
12174 840th Avenue
Glenville MN 56036

(574) 360-8142
dhansen078@gmail.com

¹ See Office of Legislative Auditor Report, “Public Utilities Commission’s Public Participation Process, 2020 Evaluation Report, released July 2, 2020. Online at: <https://www.auditor.leg.state.mn.us/ped/pedrep/puc2020.pdf>

Complainant's Counsel:

Carol A. Overland
Legalelectric
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

Respondent - parties violating Public Utilities Code of Conduct:

Commissioner John Tuma
c/o Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101
(651) 201-2220
John.Tuma@state.mn.us

Chair-Commissioner Katie Sieben
c/o Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101
(651) 201-2250
Katie.Sieben@state.mn.us

Counsel for Public Utilities Commission

Ryan Barlow
General Counsel
Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101
(651) 201-2216
ryan.barlow@state.mn.us

Jeffrey Boman
Asst. Attorney General
1100 Bremer Tower
445 Minnesota St.
St. Paul, MN 55101
(651) 757-1013
jeffrey.boman@ag.state.mn.us

II. LEGAL BASIS

The Public Utilities Commission has, as mandated by the legislature in Minn. Stat.

§216A.037, Subd. 3, developed a Code of Conduct for the Commission and Commissioners:

The purpose of this code is to preserve the integrity and independence of commission decision making and to promote public confidence in the objectivity of commission decisions. Commissioners and employees should maintain high standards of conduct to prevent a conflict or the appearance of a conflict between private interests and official duties. This code must be construed to secure these objectives in keeping with the quasi-judicial function of the commission.

Minn. R. 7845.0300.

Further, the public is to be included, and not excluded, in the Commission's dockets, informing the record, participating in the discussion:

The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section [216E.16](#).

Minn. Stat. §216.08, Subd. 2.

Commissioners may intervene in proceedings as provided by Minn. Stat. §216A.07, Subd. 3, and a Commissioner may on their own initiative bring Motions before the Commission.

The commission, on its own motion or upon complaint and after reasonable notice and hearing, may ascertain and fix just and reasonable standards, classifications, rules, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished.

Minn. Stat. §216B.09, Subd. 1. There is no exemption of reasonable notice and service requirements for Commissioners. See e.g., Minn. Stat. §§216.17; 216B.18; 216B.25.

Motion filings must be made in writing, served to parties, and parties have 14 days to respond. Minn. R. 7829.0410, Subp. 1. For Commission meetings, 10 days notice is required:

Matters may come before the commission only on ten days notice to the parties and those persons on the official service list. Under exigent circumstances the executive secretary shall reduce the ten-day notice period.

Minn. R. 7829.2800 GENERAL NOTICE REQUIREMENT.

Representations to the Commission must be true. Minn. R. 7829.0250.

Ex parte communications are prohibited. Ex parte communication is either direct or indirect communications between a commissioner and a party concerning "a material

issue during in a disputed formal petition.” Minn. Stat. §216A.037, Subd. 1(3), (4);
Minn. R. 7845.7200.

II. FACTUAL BASIS

The Commission provided notice that the Freeborn Wind project, PUC Docket 17-410, would be addressed at its July 16, 2020 meeting, with the issue before the Commission Sue Madson’s request, as an individual landowner, for a Site Permit Amendment:

DECISION ITEMS

1. [Details 2017-152](#)

** E002/WS-17-410

Northern States Power Company d/b/a Xcel Energy

In the Matter of the Application of Freeborn Wind Energy LLC for a Large Wind Energy Conversion System Site Permit for the 84 Megawatt Freeborn Wind Farm in Freeborn County .

What actions should the Commission take regarding the April 21, 2020 Request to Amend the Site Permit with a Special Condition? (PUC: **Kaluzniak**)

AFCL Exhibit A, Agenda July 16, 2020. This April 21, 2020 Permit Amendment Request was a narrow issue, where landowner Sue Madson had requested that the project remove two turbines near her day care. No other issue regarding the Freeborn Wind docket was on the agenda.

Pending before the Commission, but not set for this agenda, is Association of Freeborn County Landowners Notice of Motion and Motion for Order to Show Cause² that was filed on June 26, 2020. Exhibit B, AFCL Notice of Motion and Motion for Order to Show Cause (narrative only). This Motion was filed because AFCL learned that Freeborn Wind has removed 17 of the 41 turbines, most of those in Oakland and London Township, and moved them to Iowa locations. Apparently AFCL learned of this before Xcel had disclosed its plan to the Commission. AFCL included both road haul maps and project maps showing that 17 of 41 permitted turbines were missing from project plans. Discovery and receipt of these plans on June 22, 2020 triggered AFCL’s Motion because the Three Waters wind project had removed 19

² Filed by AFCL 6/26/2020, PUC eDockets [20206-164298-01](#).

of its 54 turbines to Iowa, and Commerce-EERA recommended and the Commission ordered a stand-alone permit amendment application on June 22, 2020³. See Exhibit B, AFCL Motion’s Ex. E DOC-EERA Letter to Three Waters and Ex. F, Commission Order requiring “stand alone amendment to the site permit application that provides clarity of projects changes.”

AFCL brought its Motion based on this Commerce-EERA recommendation and Commission Order precedent for the Three Waters Project, requiring a stand-alone application for amendment when a project removed a significant number of turbines (Three Waters 19/54 v. Freeborn 17/41). AFCL’s Motion was pending before the Commission at the time of the July 16, 2020 meeting and remains pending.

Freeborn Wind’s owner NSP/Xcel had not notified the Commission of this material change and it had not been disclosed publicly. In its Motion, AFCL requested confirmation that these turbines have been removed from the project plan and moved to Iowa, and is also requesting that Freeborn/NSP/Xcel show why it is not required to file an application for permit amendment, as was Ordered by the Commission for Three Waters Wind on June 22, 2020, when Three Waters removed 19 of its 54 turbines (19/54 is a lower percentage moved than that of Freeborn Wind’s 17/41). Removal of these 17 turbines is a material impact on the project.

On July 10, 2020, six days prior to the Commission meeting of July 16, 2020, Freeborn/NSP/Xcel filed its Response to AFCL’s Motion.⁴ Exhibit C – Xcel Reply to AFCL Motion (selected). It is clearly entitled/labeled as “Response in Opposition to AFCL’s Motion

³ Commission Order, June 22, 2020 ([20206-164181-01](#)).

⁴ Xcel Energy Reply to AFCL’s Notice of Motion and Motion for Order to Show Cause:

20207-164813-01	17-410	XCEL ENERGY	OTHER--RESPONSE TO AFCL MOTION-PART 1 OF 5	07/10/2020
20207-164813-02	17-410	XCEL ENERGY	OTHER--RESPONSE TO AFCL MOTION-PART 2 OF 5	07/10/2020
20207-164813-03	17-410	XCEL ENERGY	OTHER--RESPONSE TO AFCL MOTION-PART 3 OF 5	07/10/2020
20207-164813-04	17-410	XCEL ENERGY	OTHER--RESPONSE TO AFCL MOTION-PART 4 OF 5	07/10/2020
20207-164813-05	17-410	XCEL ENERGY	OTHER--RESPONSE TO AFCL MOTION-PART 5 OF 5	07/10/2020

for Order to Show Cause and Hearing.” Id. Freeborn/NSP/Xcel did admit in this Response to AFCL’s Motion that 17 of the turbines had been removed from the project and moved to Iowa. Xcel also admitted that it had been developing a plan “[b]ased on the townships’ overall reticence regarding road-use discussions” to move forward with the project:

... we developed an alternate plan to develop the full name plate capacity of the Freeborn Wind Energy project as economically as possible. ... As we developed this backup plan, **over the past few months**, we notified **DOC-EERA** of the alternative, even though we continued to hope we would not need it. ... on June 24, 2020, the Company reached out to **DOC-EERA**, **Commission staff**, and **Freeborn County officials** to inform them of our decision. On June 29, 2020, we reached out to affected landowners to discuss the same with them.

Exhibit C, Xcel Reply to AFCL Motion, p. 3, (narrative only)(emphasis added). Xcel’s admission that removal of the turbines was, as of July 10, 2020 in planning “over the past few months” means that it was under consideration in April, and admits that DOC-EERA was notified of these plans as they were being developed, and that on June 24, 2020, Xcel notified DOC-EERA, Commission staff, and Freeborn County officials of its decision⁵. Id. DOC-EERA apparently had not notified the Commission of the Xcel plan to move turbines to Iowa, despite being aware of this plan for “several months.” Id. Xcel claims “Commission staff” were also notified on June 24, 2020, but it appears that Commission staff did not inform the Commissioners of this substantive change. Id.

Procedurally, due to the filing of the Motion, the next step is Commission action on the AFCL Motion at an Agenda Meeting, which has yet to be Noticed.

The day before the July 16, 2020 meeting, a filing appeared, ostensibly filed by the PUC, labeled as “Staff Briefing Papers – July 16, 2020 AGENDA – DECISION OPTIONS.”⁶ The

⁵ It appears that neither DOC-EERA or Commission staff notified the Commissioners of Xcel’s decision based on Commissioner Tuma’s statements at the July 16, 2020 meeting.

⁶ PUC Briefing Papers for July 16, 2020 Agenda Meeting:

20207-164936-01	17-410	PUC	BRIEFING PAPERS--JULY 16, 2020 AGENDA - DECISION OPTIONS	07/15/2020
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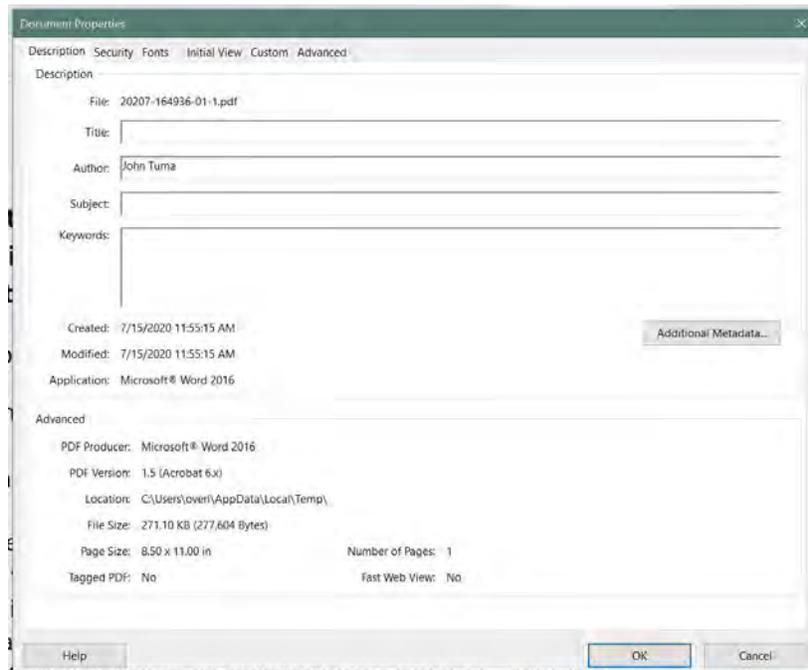
filing was received only as a “Subscription” email, with no “Official Document Service” email.

Subject: IP6946/WS-17-410: Document Subscription Notification
Date: Wed, 15 Jul 2020 13:06:45 -0500
From: eService.admin@state.mn.us
To: overland@legalelectric.org

You have subscribed to receive documents in the following matter. A new document has been submitted.
Submission Number: 20207-164936
Docket Number: IP6946/WS-17-410
Docket Type: Wind Power Plant Siting
Docket Description: In the Matter of the Application of Freeborn Wind Energy LLC for a Site Permit for the Freeborn Wind Project.
Document Type: Briefing Papers
Received Date: 07/15/2020
On behalf of: PUC
[Click here to view the document](#)

This “Briefing Papers” “Decision Option” filing was made at 13:06:45, or 1:06 p.m., less than 16 hours prior to the Commission’s Agenda Meeting (which now begin at 9:15 a.m.). AFCL Exhibit E – Tuma “Decision Option.” Commissioner Tuma has a habit of introducing “Decision Options” related to a specific matter at the last minute during deliberations, but filing a written “Decision Option” the day before a meeting has not been observed previously.

The document’s pdf properties show that John Tuma was the author of this filing:



The Tuma filing was a one page “Decision Option” that was unrelated to and beyond the scope of the meeting’s agenda item and which presented a significant issue for two townships that had lawfully refused Freeborn Wind, LLC access to its township roads through a road ordinance.

Commissioner Tuma’s “Decision Option” would undermine township control over its roads and would be contrary to the Ordinance adopted by the townships:

Commissioner Tuma moves the following decision option:

E. Take some other action deemed appropriate.

2. The Executive Secretary shall provide notice and request comment as to whether the Commission should amend the permit authorizing Permittee access to the public roads within the Townships of Oakland and London subject to the provisions of the Freeborn County Development Agreement (filed March 11, 2020, PUC Document 20203-161121-01) and, upon agreement of the Freeborn County, appoint the Freeborn County Engineer to act as the agent and representative regarding the appropriate arrangements for access road requirements, construction use of roads, maintenance and repair due to the increased impacts from transportation of equipment and project components over the township roads in the Townships of Oakland and London for the duration of the project.

The Permittee may continue in all other respects with preconstruction and construction activities under the permit as if there were the establishment of satisfactory arrangements for road mitigations in Oakland and London Townships through this amendment process so long as there is no activity on the affected township roads until the conclusion of this amendment process.

Upon receipt of this “Decision Option,” AFCL immediately filed a letter clearly stating objections, that this “Decision Option” should be removed from consideration because it was not on the agenda, that the decision to move the turbines to Iowa was made, that the “Decision

Option” was moot, and that as proposed, the “Decision Option” was contrary to Minnesota’s tenet of local control.⁷ AFCL Exhibit F – AFCL Letter to PUC.

The following morning, a letter was filed by Dan Schleck, attorney for Oakland and London townships, the townships that would be affected by this “Decision Option,” strenuously objecting to the proposal.⁸

Commissioner Tuma’s request goes far beyond the power and authority granted to MPUC in Minn. Stat. § 216F.07. This request would seek to expand its powers and go well beyond the Commission’s power and authority contrary to the clear language of the statute which reads “A permit under this chapter is the only site approval required for the location of an LWECS. The site permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances adopted by regional, county, local, and special purpose governments.” This request is an attempt to interfere in the sovereignty and regulatory powers of the Township.

The power of administrative agency in Minnesota is limited to “the authority delegated by law and in full compliance with its duties and obligations.”¹ Minn. Stat § 216F.07 specifically in clear, unambiguous language grants the PUC the limited power to preempt and supersede local zoning, land use and building codes for the LOCATION alone. The statute does not go so far as to give the PUC the power to supersede and preempt all local use of their police powers and ordinances, in addition to location, for an LWECS project.

AFCL Exhibit G – Letter - Oakland & London Townships Objecting to Permit Amendment Proposal.

Efforts by AFCL to raise these problematic issues were ignored, and participation was thwarted by COVID technology which prohibited real time objections, because participation was possible only with the invitation of the Chair. Below is a screenshot of the comments and attempts to comment and inform the record, and increasingly urgent attempts to get the attention of the Chair to correct errors and object to taking up Commissioner Tuma’s Motion:

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20207-164982-01	17-410	ASSOCIATION OF FREEBORN COUNTY LANDOWNERS	LETTER--DEMAND TO REMOVE LAST MINUTE TUMA DECISION OPTION	07/15/2020
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8

20207-164993-01	17-410	LONDON MN AND OAKLAND MN TOWNSHIPS	PUBLIC COMMENT	07/16/2020
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Chat

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from Sue Madson to all participants: 9:54 AM

yes

from Sue Madson to all participants: 9:55 AM

thank you

from Carol Overland to host (privately): 10:02 AM

Also about Flicker, NSP's recent filing shows the info
Sullivan is looking for

from Paula Hoena (privately): 10:04 AM

I will pass that along to Commissioner Sullivan, thank you!

from Carol Overland to host (privately): 10:08 AM

It's MadsOn

from Carol Overland to host (privately): 10:11 AM

OBJECTION TO ADDRESSING THIS IN THIS MEETING, NO
NOTICE TO PARTIES AND TOWNSHIPS ARE NOT
PRESENT HERE NOW

from Paula Hoena (privately): 10:11 AM

I passed your message along to the Chair

from Carol Overland to host (privately): 10:15 AM

THIS IS NOT ON THE AGENAD, NOT OK

from Paula Hoena (privately): 10:16 AM

I have passed you message along to the Chair

from Carol Overland to host (privately): 10:17 AM

there is a pending Motion for Order to Show Cause, the
Xcel letter was their Reply, this should be addressed when
Motion comes before commission. This is Utterly
inappropriate no

from Paula Hoena (privately): 10:18 AM

I have passed your message along to the Chair

from Carol Overland to host (privately): 10:19 AM

OBJECTION, Schleck is NOT claiming to be speaking for
township association. FALSE.

from Paula Hoena (privately): 10:20 AM

I have passed your message along to the Chair

To: Host

Requests to comment, objections, and corrections were patently disregarded, and there was no acknowledgement of objections whatsoever.

AFCL ordered a transcript and it is attached directly following this Complaint.

III. THE COMMISSION MEETING WAS FRAUGHT WITH STATUTORY, RULE, AND CODE OF CONDUCT VIOLATIONS.

The agenda meeting began⁹ and Sue Madson's request for a permit amendment was rather quickly denied. After Sue Madson's Permit Amendment Request was denied, Ms. Madson was thanked by the Chair and excused. Then Chair Sieben recognized Commissioner Tuma to raise this unrelated last-minute "Motion."

A. Failure to Comply with Notice and Service Requirements

Initially, Commissioner Tuma went on about the "motion" he proposed for five pages, referring to it as a "motion" eight times in five pages, and "motion" stated a total of fifteen (15) times in this section of the meeting. Tr. p. 2:5, 18; 3:4; 4:5, 20, 23; 6:5; 6:14; 8:5; 12:11; 15:1, 16:13; 22:12, 19; 23:2.. He correctly notes his right to bring a motion before the Commission, but with no acknowledgement of the Commission rules' notice and service to those on the official service list for a Motion, allowing for 14 days for a reply. Tr. p. 2:25-3:8; see also Tr. 22:17-22, but c.f. Minn. R. 7829.0410. Commission Tuma also disregards the provision that "[m]atters may come before the commission **ONLY** on ten days notice to the parties and those persons on the official service." Tr. p. 3:1-8; Minn. R. 7829.0410 and Minn. R. 7829.2800. After his opening soliloquy, Commissioner Tuma requested a conversation with Freeborn-NSP-Xcel's Harris, to which the Chair said, "Sounds good to me, Commissioner Tuma. Please go ahead." Tr. p. 6. Chair Sieben then also disregarded the Commission's notice and service requirements and allowed, in fact encouraged, this improper discussion of this improper motion.

⁹ Full meeting webcast online, Freeborn Wind is Agenda item 1:
http://minnesotapuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=1231

Minn. R. 7829.0410 and Minn. R. 7829.2800.

To propose a matter without notice or service, and to then take up a matter without notice or service, is grossly improper, and a violation of the Commission rules and Commission's Code of Conduct. Minn. R. 7829.0410; 7829.2800; 7845.0400, Subp. 2.

B. In the Commission meeting, Chair Sieben and Commissioner failed to observe Commission rules of Motion practice and procedure.

AFCL brought a Motion before Commission regarding the removal of 17 turbines from the Freeborn Wind project, to which Freeborn/NSP/Xcel responded, as provided by the rules. Minn. R. 7829.0410. AFCL's Motion was properly eFiled in eDockets and served on the parties to this proceeding. Freeborn/NSP/Xcel responded to AFCL's Motion with its July 10, 2020 filing, was properly eFiled in eDockets and served on the parties. This Motion was/is pending before the Commission. The next step in the process is for the Commission to take up AFCL's Motion at an Agenda meeting, with 10 days' notice to the parties. Minn. R. 7829.2800. There is no process allowing the Commission to circumvent and/or ignore AFCL's Motion and discuss only Freeborn/NSP/Xcel's Response, cutting AFCL out of the process.

Despite the pending AFCL Motion, Commissioner Tuma claimed that the "Decision Option" he filed and the discussion at the meeting was the "only" way that the matter could be discussed with Xcel's representative:

This is being a prefiled discussion today not because I'm trying to slide anything secretly behind somebody, it's simply being filed because this is the **only** opportunity I have to put Mr. Harris on the spot to talk about these things in his July 10th letter. And in order to get it out there, I wanted to see what their considerations are, what they were talking about in their July letter, and the **only** way I can I can do this is to have this discussion today. This is actually shedding more sunlight on the process than we ever have with regards to notice and it really is **only** meant for me to have a conversation around what they were talking about and whether there are any avenues they may consider or that I may consider on my own motion

in the future, Madam Chair. That's it. I really want to have a short conversation with Mr. Harris now, if that's ok with you, Madam Chair.

Tr. p. 5:25-6:18 (emphasis added).

This meeting is not the only opportunity. The Motion before the Commission, with the Xcel Response, procedurally provides an opportunity. These matters would be addressed as the Motion comes before the Commission. Knowing that according to the rules a Response would be received prior to the meeting, the Commission could have scheduled the Motion on the Agenda to properly bring these matters before the Commission. That did not occur. The Commission can schedule the Motion on an upcoming agenda. This is not the "only opportunity to put Mr. Harris on the spot to talk about these things in his July 10th letter."¹⁰ Addressing the AFCL Motion before the Commission is the appropriate and available opportunity.

The job of the Chair is to control and direct the meeting. Rather than refer to the pending Motion before the Commission, rather than note that this matter was not on the agenda and defer until such time as it is on the agenda, rather than follow Commission procedure, the Chair went along with this improper idea:

CHAIR SIEBEN: Sounds good to me, Commissioner Tuma. Please go ahead.

Tr. 6:19-20.

Commissioner Tuma asked Xcel outright why they didn't file a motion, encouraging Xcel to attempt to pre-empt the townships' local control:

Well, to give you my frustration, Mr. Harris, you can explain to me, why didn't you—I mean, you mentioned in the July letter that you had considered preemption and you thought you'd be successful, why didn't you consider making a motion in front of us? I mean, that's the part that I think is most frustrating bewildering to me, it seems like this was in the works for a while, why didn't you at least explore that?

¹⁰ Commissioner Tuma repeatedly refers to Mr. Harris' "July 10th letter" and never as Xcel's "Response" to the AFCL Motion, thus it is not clear whether Commissioner Tuma recognized that the July 10th missive was a Response to a Motion pending before the Commission.

Tr. p. 13:9-18.

There was no acknowledgement of the pending AFCL motion that brought the movement of 17 turbines to the attention of the Commission. This circumvention and failure to comply with the Commission's established procedures by both Commissioner Tuma and Chair Sieben is the essence of impropriety – ignoring the AFCL Motion pending before the Commission, and inviting, imploring, Xcel to file a Motion, it is giving preferential treatment to Xcel, losing independence and impartiality of action, and it adversely affects the confidence of the public in the integrity of the commission. Minn. R. 7829.0410; 7829.2800; 7845.0400.

C. Chair Sieben and Commissioner Tuma discounted rights of parties and participants.

As above, there was insufficient notice for either a Motion or a general matter before the Commission, and parties and the local governments at interest were not served. Minn. R. 7829.0410, 7829.2800. Immediately following the filing of Commissioner Tuma's "Decision Option," AFCL objected to this failure to provide notice and service in its July 15, 2020 letter to the Commission, followed by Oakland and London Townships. Exhibits F and G. AFCL is an intervening party in this docket, and London and Oakland townships are participants and the local governments whose ordinance and whose "local control" is at issue. There was no recognition of parties and participants rights in a matter before the Commission. Minn. R. 7829.0800; 7829.0900.

The Commission should be more sensitive to public participation concerns following issuance of the Office of Legislative Auditor report on public participation at the Public Utilities Commission on Monday, July 27, 2020¹¹.

¹¹ See Office of Legislative Analyst Report, "Public Utilities Commission's Public Participation Process, 2020 Evaluation Report, released July 2, 2020. Online at: <https://www.auditor.leg.state.mn.us/ped/pedrep/puc2020.pdf>

Rather than welcoming or considering public participation, Commissioner Tuma expressed a lack of understanding of AFCL's and the townships' objections, instead gaslighting and casting aspersions on them, and characterizing our filings as "the unnecessary loud objections." Tr. p. 5:1. He further states:

I kind of find it odd that some of the opposing landowners in the townships are objecting to my discussion of a potential notice instructing our executive secretary to do something in a public setting.

Tr. p. 2:19-23.

I understand they may not be happy with where the notice potentially is going, but to somehow think that there's some grand conspiracy stretches the bounds of human logic to the point where even Internet conspiracy theories on the pandemic seem like a pleasant distraction.

Tr., p. 3: 17-22.

Despite these statements of incredulity, Commissioner Tuma demonstrated his intent to cut out the townships from the meeting and in fact did, claiming that the townships will have "every opportunity" to participate later, attempting to justify postponement of their participation:

Again you don't need to talk to Oakland and London Townships. If we go forward with this, they'll have every opportunity to have a conversation with us. They'll be able to make comments, they'll be able to make motions, they'll be able to come in front of us and have a full vetting of whether their actions were appropriate and within accordance with Minnesota law.

Tr. 8:11-18; 5:16-24.

Commissioner Tuma continued:

But I do have the right to make a notice and ask for comment and I do have the right to make a motion somewhere down the line to amend this permit and I'm going to reserve that right. **I don't have to come in front of the Commission like I did today to do that. And for those people that insinuated somehow I was being nefarious for doing that, I am somewhat insulted.**

Tr. 22:17-24 (emphasis added).

In concluding this section of the meeting, Chair Sieben joined in:

You are a commissioner who is always looking out for the rights of local landowners, local units of government, counties and townships to participate in our process, **so I share your frustration over some of those comments.**

Tr. 23:4-8 (emphasis added).

Rather than facilitate participation, the Commission made it very difficult to know there was a need to show up for the meeting; it was impossible to physically appear; acknowledged the need for participation, but later, not now; did not so much as inquire as to whether the two townships whose “local control” was at issue were present; did not so much as inquire as to whether a party had comments; did not so much as inquire as to whether anyone on Webex had comments; and with the use of Webex; ignored comments and emphatic objections of a party on the Webex chat with moderator; and prohibited those present on the call from participating. Instead of acknowledging and addressing concerns and objection, the Commissioners were oppositional and stonewalled the public.

Failure to provide notice, service and to allow the parties to participate, and failure to provide notice, service and to allow the two specific local units of government to participate when their ordinance and decision is at issue, is violation of the Commission’s mandate of a broad spectrum of public participation. Minn. R. 7829.0410; 7829.2800.

D. The Commission failed to recognize Minnesota’s tenet of “local control” and Minnesota Statutes and instead promoted preemption.

Minnesota townships have clear authority to develop local zoning and other ordinances, and official controls, and these ordinances and controls may be more restrictive than county ordinances. See Minn. Stat. ch. 462; e.g., Minn. Stat. §462.352, Subd. 2 (includes townships in definition of municipality); Minn. Stat. §462.357, Subd. 1 (townships may enact official controls). This authority is separate from that of the county, and, as above, a township’s local

controls may be more restrictive than those of the county. *Altenburg v. Bd. of Supervisors of Pleasant Mound Twp.*, 615 N.W. 2d 874, 880-881 (Minn. Ct. App. 2000).

Commissioner Tuma went to great lengths to present himself as supportive of local units of government repeatedly in this meeting, without substantive support for these broad statements on the record:

There really has been no commissioner in the recent history, I don't think, that has worked harder to include local governments in participation in this very process. And think anybody would admit that that knows what I've done and the work I've done behind the scenes to make sure the permits include local participation. That should tell you something about what I'm proposing to do.

Tr. p. 3, l. 9-16. This theme is reiterated:

Again, no commissioner's worked harder to get local units of government involved in this process, so I don't want that to be misinterpreted here. I take a little bit of umbrage to the fact that people are complaining, they're speaking for the township association when, in fact, they don't, they speak for two townships.

Tr. p. 9:11-17.

After listening to the foregoing discussion, after having been served with the AFCL and townships' complaints, in particular the townships' statements regarding disregard for local control and authority of townships for self-governance, after having been forwarded AFCL comments and objections by Webex moderator, Chair Sieben ended this section of the meeting with similar gratuitous laudatory statements about concern for townships and failure to acknowledge the validity of party and participant comments:

Thank you, Commissioner Tuma. You are a commissioner who is always looking out for the rights of local landowners, local units of government, counties and townships to participate in our process, so I share your frustration over some of those comments.

Tr. p. 23:3-8.

These statements of such great consideration and advocacy for local governments are not

consistent with statements made by Commissioner Tuma about those same local governments and their ability to participate, but participate later. Tr. 5:16-24; 8:11-18; 9:14-22. “Looking out for local units of government” is not consistent with encouraging Xcel to disregard township ordinance and use the roads despite township prohibition. Tr. 15:19-22. “Looking out for local units of government” is not consistent with “we have this Minnesota preemption statute and we want to look at it...” promotion of pre-emption. Tr. 7: 13-14; see also 6:24-25; 7:13; 9:2-8; 13:12-18.

Minn. Stat. ch. 462; e.g., Minn. Stat. §462.352, Subd. 2 (includes townships in definition of municipality); Minn. Stat. §462.357, Subd. 1 (townships may enact official controls). Local control of townships may only be pre-empted by the Commission with “good cause.” Minn. Stat. §216F.081.

E. Participation of parties and townships as required by statute was thwarted.

The Minnesota Power Plant Siting Act’s public participation mandate is applicable to the siting of wind projects, as they are expressly not exempted. Minn. Stat. §216F.02. That public participation mandate is broad:

The commission shall adopt broad spectrum citizen participation as a principal of operation. The form of public participation shall not be limited to public hearings and advisory task forces and shall be consistent with the commission's rules and guidelines as provided for in section [216E.16](#).

Minn. Stat. §216.08, Subd. 2.

In the meeting, many comments were made by Commissioner Tuma that directly conflict with the Commission’s public participation mandate:

The good folk of Oakland and London Townships will have every opportunity to make their case in front of us as to why their actions were reasonable and why we shouldn’t exercise or preemptive authority if it exists after Minnesota law. After the notice is finally drafted and served on interested parties, including the townships, and the matter is put before us for comment and, if so, possibly a

hearing.

Tr. p. 5:16-24.

Again, you don't need to talk to Oakland and London Townships. If we do go forward with this, they'll have every opportunity to have a conversation with us. They'll be able to make comments, they'll be able to make motions, they'll be able to come in front of us and have a full vetting of whether their actions were appropriate and within accordance with Minnesota law.

What I would like you to do is have a conversation with Freeborn County, 'cause I think they'd probably be willing to do it because they were willing to do it with the other townships to act as kind of the liaison for these questions of oversize load mitigations, is that a reasonable resolution to this? Do we have authority in this area?

Tr. p. 8:11-9:1.

There was not one word of inquiry as to whether parties had comments, corrections, or whether they were even present. None of this discussion should have occurred without Oakland and London townships participating. Comments made by AFCL via Webex to the moderator by counsel for AFCL were "passed on to the chair" but to no avail.

The Commission's failure to provide opportunity for public participation is a clear violation of the Commission's public participation mandate. Minn. Stat. §216.08, Subd. 2.

F. False Statements were made by Commissioner Tuma

Representations to the Commission must be true. Minn. R. 7829.0250. In the course of this discussion, Commissioner Tuma made at least two demonstrably false statements. In one, he claimed that the townships' attorney misrepresented who Mr. Scheck was representing:

Again, no commissioner's worked harder to get local units of government involved in this process, so I don't want that to be misinterpreted here. I take a little bit of umbrage to the fact that people are complaining, **they're speaking for the township association when, in fact, they don't, they speak for two townships.**

Tr. p. 9:11-17 (emphasis added). This statement is false, as shown in the letter caption stating that the letter is from London and Oakland Townships, and the first sentence of Mr. Schleck's letter, stating that he is representing Oakland and London Townships. AFCL Exhibit G, Schleck Letter for Oakland and London Townships. Mr. Schleck did copy the Minnesota Association of Townships in his letter, a wise choice given the egregious proposal to strip the townships of their authority under state statute. At no point did Mr. Schleck state that he was representing the township association.

Commissioner Tuma also made a false statement regarding the county's planned use of the revenue received by the county:

To your point about economic development, I know for in(a) fact Freeborn County was going to use the money generated from this particular project to be the fiscal backup for a COVID business recovery program they had in their county. And now it's going to be impaired because of the loss of those turbines, so that's a sad situation for Freeborn County and it's sad for Minnesota, I think.

Tr. 21:18 – 22:1. First, this statement by Commissioner Tuma assumes facts not in evidence, facts not within the Commission's record, and no evidence was presented at the July 16, 2020 Agenda meeting regarding use of the Freeborn funds for a COVID business recovery program. Second, upon information and belief, Freeborn County is the recipient of a CARES grant of \$3.7 million, \$150,000 that the county and city contributed will not be needed, and the county is encouraging businesses to apply¹². The record in this docket was developed before COVID-19 appeared, and logically there is nothing in the record regarding the county's revenue from the Freeborn project for a COVID business recovery fund.

What is the source of this false statement about the County's intentions for the Freeborn Wind revenue? Given Commissioner Tuma's admission that he was down in the project area

¹² Freeborn County Board, June 16, 2020 meeting: <https://www.co.freeborn.mn.us/CivicMedia?VID=91>
Freeborn County Board, July 7, 2020 meeting: <https://www.co.freeborn.mn.us/CivicMedia?VID=94>

driving the roads, did he also improperly meet with project or county personnel, was there ex parte contact? Was this false statement made up of whole cloth? Is there some other source of this information? Whatever the source, this information is not in the record, and not to be considered by the Commission. The veracity of this information should be investigated.

Commissioner Tuma's false statements are contrary to the Commission's rules regarding representations to the Commission, and also affect adversely the confidence of the public in the integrity of the commission. Minn. R. 7829.0250; Minn. R. 7845.0400, Subp. F.

G. Commissioner Tuma encouraged Xcel to violate the permit and London and Oakland Township's ordinances

In an astonishing statement, Commissioner Tuma encouraged Xcel to violate the permit and London and Oakland Township's ordinances.

And it's a public road and the last time I checked I don't think London and Oakland Township has a police force and so you could go across those public roads unless they brought it to court.

Tr. p. 15:19-22. This is telling Xcel, giving permission to Xcel, to go ahead and use the township roads to build the project, despite the ordinance prohibiting Xcel's use of the township roads for this purpose and despite the failure of Xcel and the townships to come to an agreement on road use.

This is an extreme example of violation of the Commission's Code of Conduct that proposes giving preferential treatment to Xcel, impartiality is lost, and it adversely affects the confidence of the public in the integrity of the commission. Minn. R. 7845.0400 Subp. 2(B), (D), and (F). This is also a disqualifying factor due to the expression of extreme personal bias or prejudice concerning a party through encouragement to violate the site permit and the township ordinances. Minn. R. 7845.0600. Commissioner Tuma should be censured and disqualified

from participating in future discussion and decisions regarding any of the Freeborn Wind docket.

G. Economic benefits to the county seems to be the primary consideration.

A theme in Commissioner Tuma's July 16, 2020 discussion is the loss of economic benefits to the state and county would receive based on production, and the lessening of that revenue if 17 turbines were moved to Iowa, also reflected in discussions with Xcel about PTC (production tax credit):

We're your Minnesota Commission and you know, we have this Minnesota preemption statute and we want to look at it, and we want to make sure, I do at least, to make sure that the full economic benefits that we found in that long, thorough and contentious, arduous maybe even, a Minnesota proceeding could still be realized for Minnesotans.

Tr. 7:12-18.

... I just don't want to give up on the huge economic benefit that these turbines provide to Minnesota.

Tr. 12:8-10.

We're losing a significant amount of economic benefit to Minnesota because of this, and I really do want to explore every avenue and think through this.

Tr. 16:16-19.

Chair Sieben looked up the revenue expected¹³:

I noticed, or I looked up in the Litchfield direct testimony on the financial impacts of the project that will result in an annual tax payment of approximately \$9,400 per turbine per year, or up to almost 400,000 for all 42¹⁴ turbines planned. And as participants know, by Minnesota law this would be allocated 80 percent to the county and 20 percent to the host township.

Tr. 16:23-17:5; see Litchfield Direct, p. 13.

¹³ Note that Commissioner Sieben is confusing the removal of the 17 turbines from Freeborn with the removal of 19 turbines from the Three Waters wind project last month, where the Commission ordered a stand-alone application (PUC Docket 19-576).

¹⁴ One turbine was removed previously, the number of turbines permitted is 41, not 42.

These are estimated payments, based on generation. There was no mention of the direct payments to landowners, twice the revenue of the generation-based payments to local governments, which is twice that of payments to government, \$800,000 v. \$397,000:

360 **Q. What local tax revenue will the Project provide?**

361 A. The Project will pay a Wind Energy Production Tax to the local units of government
362 of \$1.20 per megawatt hour of electricity produced, resulting in an annual tax
363 payment of approximately \$9,400 per turbine per year, or up to \$397,000 per year
364 for all 42 turbines planned. Per Minnesota law, this would be allocated 80% to the
365 County and 20% to the host township. This means that each township would
366 receive approximately \$1,900 per turbine per year. Hayward Township has the
367 potential for 6 turbines and approximately \$11,400 per year in new revenue.
368 Oakland Township has the potential for 8 turbines and approximately \$15,200 per
369 year in new revenue. Shell Rock Township has the potential for 11 turbines and
370 approximately \$20,900 per year in new revenue. London Township has the potential
371 for 17 turbines and approximately \$32,300 per year in new revenue.

Litchfield Direct, p. 13. Consider those landowner payments:

351 Our estimates for landowner royalties are over \$800,000 per year in Freeborn
352 County. In total, Freeborn County landowners are expected to receive an estimated
353 \$35 million over the 30-year life of the Project. It is an incredible economic boost
354 when you consider that 99 percent of their farmland can continue to operate in
355 agriculture as normal. This additional prosperity will have benefits for other

Litchfield Direct, p.12. Consider the implications of raising only the estimated revenue for local government, with no consideration of landowner royalties that are twice those of local governments. The focus on impacts on the county, together with Commissioner Tuma's desire to transfer authority over roads to the county implies a bias toward not just Xcel but also the county. Bias, preferential treatment, is an impropriety and a violation of the Commission Code of Conduct, opening a Commissioner to disqualification. Minn. R. 7845.0400; 7845.0600; Minn. Stat. §216A.037.

IV. AFCL REQUESTS CENSURE AND DISQUALIFICATION OF COMMISSIONER TUMA AND COMMISSION CHAIR SIEBEN

With this Complaint, and based upon the above facts and applicable laws and rules,

Association of Freeborn County Landowners requests censure, sanction, and disqualification as provided for by Minn. Stat. §216A.037, Subd. 4, and those Code of Conduct rules promulgated, specifically, Minn. R. 7845.0400 Subp. 2 (B), (D), and (F); 7845.0600, Subp. 1 (A) and (C); and 7854.7200, Subp. 1(A), and the Commission's continuing violations of Minn. Stat. §216E.08, Subd. 2.

The Commission complaint procedure specifies that Respondents must file and serve an Answer to the Complaint and that a Complaint shall be referred to the Office of Administrative Hearings for an investigation and report. Minn. Stat. §216A.037, Subd. 4(e), (f).

August 3, 2020



Carol A. Overland MN #254617
Attorney for AFCL
Legalelectric – Overland Law Office
1110 West Avenue
Red Wing, MN 55066
(612) 227-8638
overland@legalelectric.org

In The Matter Of:
Freeborn Wind Energy
17-410 - Partial Transcript

July 16, 2020

Shaddix & Associates
7400 Lyndale Avenue South
Suite 190
Richfield, MN 55423

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1 STAFF BRIEFING - ORAL ARGUMENTS - DELIBERATIONS
 2 BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
 3 Katie Sieben, Chair
 4 Valerie Means, Commissioner
 5 Matthew Schuerger, Commissioner
 6 Joseph Sullivan, Commissioner
 7 John Tuma, Commissioner
 8
 9 In the Matter of the Application of Freeborn Wind Energy,
 10 LLC for a Large Wind Energy Conversion System Site Permit
 11 for the 84 Megawatt Freeborn Wind Farm in Freeborn County
 12
 13 MPUC DOCKET NO. E002/WS-17-410
 14
 15
 16
 17 Minnesota Public Utilities Commission
 18 350 Metro Square Building
 19 121 Seventh Place East
 20 St. Paul, Minnesota
 21
 22 July 16, 2020 - Partial Transcript
 23
 24
 25 TRANSCRIPT PREPARED BY: Janet Shaddix Elling, RPR

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1 (Partial Transcript.)
 2 CHAIR SIEBEN: Commissioner Tuma.
 3 COMMISSIONER TUMA: Well, Madam Chair,
 4 obviously, you've all saw, I do happen to have a
 5 motion. I want to be -- just to clarify what I'm
 6 proposing, I don't even know if I'm going to offer
 7 it, but I just want to clarify and ask Xcel some
 8 questions real quick around this. And so if it's
 9 okay with you, Madam Chair, I actually tried to
 10 write it out, but I hope I didn't miss anything, but
 11 let me give it a shot if that's okay with you, Madam
 12 Chair.
 13 CHAIR SIEBEN: Sure. Go ahead,
 14 Commissioner Tuma.
 15 COMMISSIONER TUMA: So I wanted to clear
 16 up a misunderstanding from some of the objecting
 17 landowners and the townships as to what's actually
 18 happening here with the motion I proposed.
 19 I kind of find it odd that some of the
 20 opposing landowners in the townships are objecting
 21 to my discussion of a potential notice instructing
 22 our executive secretary to do something in a public
 23 setting.
 24 As anybody who has been in front of this
 25 Commission for any amount of time knows, that if I

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1 wanted to I could have gone to staff and had this
 2 very notice drafted without talking to anybody and
 3 ask the executive secretary to submit it on my own
 4 authority to take up a motion in front of the
 5 Commission on any of these permits or, frankly,
 6 anything under the rules that I thought was
 7 appropriate. I could have done it in private as
 8 opposed to openly and publicly in the sunlight.
 9 There really has been no commissioner in
 10 the recent history, I don't think, that has worked
 11 harder to include local governments in participation
 12 in this very process. And I think anybody would
 13 admit that that knows what I've done and the work
 14 I've done behind the scenes to make sure the permits
 15 include local participation. That should tell you
 16 something about what I'm proposing to do.
 17 I understand they may not be happy with
 18 where the notice potentially is going, but to
 19 somehow think that there's some grand conspiracy
 20 stretches the bounds of human logic to the point
 21 where even Internet conspiracy theories on the
 22 pandemic seem like a pleasant distraction.
 23 There certainly will be complete vetting
 24 of our legal authority. Actually, that's what I
 25 want, a complete vetting of our legal authority, and

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1 we will act in accordance with the law. There has
 2 been no prejudice and we will act completely in
 3 accordance with the law that's given in front of us
 4 as we have it from the legislature today and we will
 5 be consistent with that. And my motion today is
 6 actually very consistent with our rules and that
 7 provision of acting within the rule of law.
 8 Further, the language in paragraph two on
 9 satisfactory arrangements is only meant to keep
 10 other aspects of the permit operating so that Xcel
 11 can keep working on those other aspects unrelated to
 12 the activities on the roads in Oakland and London
 13 Townships. It is simply just a way to permit the --
 14 excuse me, just the way the permit is drafted, and I
 15 didn't want there to be any indication that we
 16 didn't want to keep the other work going forward as
 17 is required on the way our permit was drafted. And
 18 it really is because of the way our permit was
 19 drafted that this is causing a problem.
 20 The motion is quite clear. Road
 21 activities in Oakland and London Township may not
 22 commence until completion of the process. And that
 23 is not even disputed. It's very clear in my motion
 24 that these activities will not commence until this
 25 process is fully completed after a full vetting.

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1 Actually, thanks to the unnecessary loud objections,
2 I noticed that the activities of a township road
3 should actually be restricted to only overweight
4 activities, and that therefore if I were to make a
5 motion today on this, the fifth line of the second
6 paragraph should actually read the amendment process
7 is so long as there is no overweight activity on the
8 affected township roads.
9 All these are public roads, okay, and the
10 activities on these public roads can continue
11 without disruption in accordance with the law.
12 Anybody can drive on them. An Xcel truck could
13 drive on them so long as they're following the law
14 and they're not overweight. I actually drove on
15 them this weekend. They are public roads.
16 The good folks of Oakland and London
17 Townships will have every opportunity to make their
18 case in front of us as to why their actions were
19 reasonable and why we shouldn't exercise our
20 preemptive authority if it exists under Minnesota
21 law. After the notice is finally drafted and served
22 on interested parties, including the townships, and
23 the matter is put before us for comment and, if so,
24 possibly a hearing.
25 This is being a prefiled discussion today

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1 not because I'm trying to slide anything secretly
2 behind somebody, it's simply being filed because
3 this is the only opportunity I have to put
4 Mr. Harris on the spot to talk about these things in
5 his July 10th letter. And in order to get it out
6 there, I wanted to see what their considerations
7 are, what they were talking about in their July
8 letter, and the only way I can do this is to have
9 this discussion today. This is actually shedding
10 more sunlight on the process than we ever have with
11 regards to notice and it really is only meant for me
12 to have a conversation around what they were talking
13 about and whether there are any avenues they may
14 consider or that I may consider on my own motion in
15 the future, Madam Chair. That's it.
16 I really want to have a conversation, a
17 short conversation with Mr. Harris now, if that's
18 okay with you, Madam Chair.
19 CHAIR SIEBEN: Sounds good to me,
20 Commissioner Tuma. Please, go ahead.
21 COMMISSIONER TUMA: So, Mr. Harris, I
22 appreciate the very difficult job, as has been
23 evident just by the response to my inquiry about
24 just a notice to possibly consider this concept of
25 preemption that you raised in your July 10th letter,

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1 it's been floating around for some while, so I do
2 really appreciate the difficult challenge that you
3 have and I really do desire very much that you work
4 with local units of government. But that should
5 only go so far and we need to (inaudible) the
6 parameters of that with regards to this with
7 oversight, roads, restrictions, what does that mean,
8 does it fit within the preemption.
9 And so as I sit here looking at a
10 Minnesota utility, I'm kind of befuddled why you
11 didn't visit us in advance before sending us a
12 letter. We're your Minnesota Commission and, you
13 know, we have this Minnesota preemption statute and
14 we want to look at it, and we want to make sure, I
15 do at least, to make sure that the full economic
16 benefits that we found in that long, thorough and
17 contentious, arduous maybe even, a Minnesota
18 proceeding could still be realized for Minnesotans,
19 for the Minnesota counties, the Minnesota townships,
20 the Minnesota school districts that was determined
21 there.
22 So these turbines moving away. A lot of
23 that economic benefit leaves us. And so, you know,
24 I'm looking at it and I think we're trying to meet
25 the Minnesota Renewable Energy Standard here, so I'm

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1 a little bewildered why this Minnesota company
2 during probably meetings in Minnesota decided that
3 they would move turbines to Iowa.
4 And so I would hope and my desire is, in
5 the end, whether I make this motion or not, it could
6 be coming, is that you would go back and have a
7 conversation as to whether there is something we can
8 do here and that be willing to at least bring a
9 provision before us, okay, that would somehow lay
10 out this -- fully lay out this argument.
11 Again, you don't need to talk to Oakland
12 and London Townships. If we do go forward with
13 this, they'll have every opportunity to have a
14 conversation with us. They'll be able to make
15 comments, they'll be able to make motions, they'll
16 be able to come in front of us and have a full
17 vetting of whether their actions were appropriate
18 and within accordance with Minnesota law.
19 What I would like you to do is have a
20 conversation with Freeborn County, 'cause I think
21 they'd probably be willing to do it because they
22 were willing to do it with the two other townships
23 to act as kind of the liaison for these questions of
24 oversize load mitigations, is that a reasonable
25 resolution to this? Do we have authority in this

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1 area?
2 So in a Minnesota nice way I'm asking you
3 to please reconsider your action to move those
4 turbines to Iowa and have a more thorough discussion
5 regarding the preemption authority. I would hope
6 you would at least give us and the good people of
7 Minnesota that common courtesy to fully talk through
8 whether preemption should be used here. I know
9 you're making a business decision, I get that, but I
10 would hope you could at least go back.
11 Again, no commissioner's worked harder to
12 get local units of government involved in this
13 process, so I don't want that to be misinterpreted
14 here. I take a little bit of umbrage to the fact
15 that people are planning, they're speaking for the
16 township association when, in fact, they don't, they
17 speak for two townships. But I also want to take
18 those two townships' concerns considered completely.
19 There is no predetermination here, there is only a
20 question is there authority here that we're not
21 using to make sure the full benefits of this program
22 can move forward.
23 Now, we can discuss all the economic
24 developments, benefits, and all that today, I don't
25 care to get into that. I just want to know if I

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1 have a commitment from you, if I were to do a notice
2 like this, whether I do it today or whether I do it
3 tomorrow when I call up Mr. Ek and ask Mr. Seuffert
4 to send out a notice asking these questions, which I
5 believe I have every authority to do. Because if
6 we're going to have an endless parade of potential
7 amendments and complaints around this permit, I
8 guess I want to know the counterweighting arguments
9 there and I want them to be fully vetted.
10 Do I got a commitment from you to do that
11 or are we too far down the road, unfortunately, to
12 use a bad metaphor?
13 MR. HARRIS: Yeah. Madam Chair,
14 Commissioner Tuma, I certainly appreciate the
15 thought behind this. And we've talked a lot about
16 this since your decision alternative came in
17 yesterday.
18 And I think where -- where we're at is
19 that, essentially, the same place as before on this.
20 I think that this is an important question on
21 preemption. I think that this is something that,
22 obviously, if it doesn't get vetted in this docket
23 or related to Freeborn, it's going to be something
24 that comes up elsewhere. And that's something that
25 we certainly considered as we made our decision

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1 here. But, frankly, I think that the company is in
2 a place where we're just too far down the path to
3 really have an opportunity to move these turbines
4 back to Minnesota.
5 We'd certainly, and if you order this
6 decision alternative, we will participate. But I
7 think that the move is -- is going to happen, it's
8 going to take advantage of the construction right
9 now. Locking in these companies is difficult, you
10 know, for construction purposes. There would
11 certainly be uncertainty, even if we got through
12 this amendment process, I could -- or a, you know,
13 this decision process, I could imagine future
14 litigation around it that would leave, you know, the
15 question on whether we can build in those townships
16 continuing to be uncertain. And, you know, even
17 through 2021 putting risk on the PTCs like we laid
18 out in our -- in our letter.
19 So if you -- if you open up a comment
20 period on this and then want us to do it, we'll
21 participate in that, but I don't know that that will
22 ultimately change our decision on where to build
23 those turbines just given the reality of sort of the
24 time pressures and the construction pressures.
25 COMMISSIONER TUMA: Well, I understand

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1 that, Mr. Harris. I appreciate that, I know the
2 difficulty that you guys are facing with regards to
3 the PTC, and we want to -- we want to get them in
4 place while the sale is still on, you know, and the
5 sale will end at some point, and so I get that, I
6 get that very much.
7 There seems to still be an opening, you
8 know, I just don't want to give up on the huge
9 economic benefit that these turbines provide
10 Minnesota. And, you know, I don't necessarily need
11 to do a motion today, but if we're going to continue
12 to have amendment offers or amendment offers after
13 amendment offers, I want to have this fully vetted.
14 And, you know, I may just wait for that, I'll see
15 what my other commissioners feel, but I'm still
16 holding out hope, you know. That's my struggle
17 here. I truly want Minnesota to benefit, I'm a
18 Minnesota Public Utilities commissioner and I took
19 this job because I really do believe this, the great
20 economic benefits that wind energy provides us, and
21 that was really proven after a very contentious
22 process here for those very turbines.
23 MR. HARRIS: Yeah. I'll just note, Madam
24 Chair, Commissioner Tuma, I share your concerns.
25 And if we could have built these and had an

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1 opportunity to work with the townships, we would
2 have. If we could have built them in Minnesota, we
3 would have. They're not easy phone calls to have
4 with the landowners telling them that we're going to
5 move these turbines. And I think we, you know, gave
6 as good of an effort as we could have to get them
7 built there, but the townships were simply
8 unreceptive.

9 COMMISSIONER TUMA: Well, to give you my
10 frustration, Mr. Harris, you can explain to me, why
11 didn't you -- I mean, you mentioned in the July
12 letter that you had considered preemption and you
13 thought you'd be successful, why didn't you consider
14 making a motion in front of us? I mean, that's the
15 part that I think is most frustrating and
16 bewildering to me, it seems like this was in the
17 works for a while, why didn't you at least explore
18 that?

19 MR. HARRIS: Yeah. Madam Chair,
20 Commissioner Tuma, that's a good question. And I
21 think the issue that we saw was that, you know, we
22 could have brought a lawsuit against the townships
23 and raised the preemption question there. But, you
24 know, you know, Commissioner Tuma, that process is
25 not going to be fast. And when we were making this

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1 decision, when we were considering our alternatives,
2 we were looking at a PTC quit at the end of 2020.
3 And so we needed to get, you know, a decision made,
4 develop these alternatives before then. And I think
5 even if we had brought a motion in front of you, we
6 still would have likely faced that litigation and
7 that long, drawn-out process, you know, following a
8 decision from the Commission.

9 COMMISSIONER TUMA: You know, and I guess
10 that's, you know, and maybe that's what we have to
11 be very careful in our permit language as we look at
12 it. You know, had the permit language not kind of
13 put an impediment in front of you if there was an
14 effective mechanism for you to come before us, and I
15 don't want to make it easy, that's the point, I
16 don't want to make it easy for you just to, the
17 township is not dealing with us, let's just run to
18 the Commission, but I think there is some elements
19 here that -- and I don't know that for a fact 'cause
20 I would have to wait, I'm not prejudging it, but
21 there's just, based on what you filed, there seems
22 to be indications that there may be a justification
23 for us to have acted in this situation.

24 And the fact that our permit required
25 you, before you could go do anything, that was what

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1 the second paragraph in my motion is about, you
2 can't do anything until you have an arrangement. So
3 if you were to sue, you have a poor district court
4 judge who is looking at you going, well, aren't you
5 supposed to work it out, that's what the permit
6 says, and you haven't, you know, and it does put you
7 in a difficult spot. And so, you know, and that was
8 because the way our permit was drafted. I mean,
9 there's just no way around it.

10 Had our permit been drafted to give you a
11 chance to create some mitigation methods or process
12 that puts you in the point of saying, yes, we can
13 litigate it, which is what the final conclusion, if
14 this were to go all the way to the end, I would see
15 a decision that we would have a liaison or the
16 county acting in that role of saying, yes, these
17 overweight problems are going to be mitigated,
18 Judge, it's taken care of.

19 And it's a public road and the last time
20 I checked I don't think London and Oakland Township
21 has a police force and so you could go across those
22 public roads unless they brought you to court. And
23 that's what you're saying, that still could have
24 happened in this situation, they still could have
25 gone to court and there could have still been some

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1 uncertainty that was created even if we were to go
2 to the full end of where my notice would bring us if
3 we were to make that determination, which we have
4 not made.

5 MR. HARRIS: Madam Chair, Commissioner
6 Tuma, I agree with that. And like I said to begin
7 with, I don't think that this is an issue that's
8 going to go away whether it's in this docket or
9 another, I think this is something that we're going
10 to have to confront in the very least future
11 permitting issues.

12 COMMISSIONER TUMA: Well, Madam Chair, I
13 haven't made a motion yet. I guess if any one of
14 the other commissioners have something to say I
15 would cherish their insight or thoughts on this.
16 But, as you can tell, I am frustrated. We're losing
17 a significant amount of economic benefit to
18 Minnesota because of this, and I really do want to
19 explore every avenue and think through this. Maybe
20 this isn't the place to have it, maybe it is. So
21 I'll leave others to make comments.

22 CHAIR SIEBEN: Commissioner Tuma, I
23 appreciate that. I noticed, or I looked up in the
24 Litchfield direct testimony on the financial impacts
25 of the project that the project will result in an

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1 annual tax payment of approximately \$9,400 per
2 turbine per year, or up to almost 400,000 for all 42
3 turbines planned. And as participants know, by
4 Minnesota law this would be allocated 80 percent to
5 the county and 20 percent to the host township.
6 So, Mr. Harris, I'm frustrated, too, and
7 I understand the company's decision. What can you
8 say about -- so this is moving, is it 17, or 19 of
9 the 42 turbines, what can you tell us about the
10 remaining turbines? Is the company committed to
11 moving forward with construction on the remaining
12 turbines in Minnesota or do we need to worry about
13 that?
14 MR. HARRIS: Madam Chair, we are
15 committed to moving forward with those remaining
16 turbines. There, of course, could be something that
17 comes up with a site that would require them to be
18 moved to an alternate location just like any
19 project, but our plan is to build all the remaining
20 turbines from the site permit in Minnesota.
21 CHAIR SIEBEN: And, Mr. Harris, I
22 appreciated your exchange with Commissioner Tuma,
23 but do you -- from the company's perspective, is
24 there anything that the Commission is doing or not
25 doing that weighed into the company's decision to

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1 move the turbines to Iowa? I want you to be as
2 explicit as you can because I think it's important
3 for us as the Commission. As Commissioner Tuma
4 said, we're the Minnesota Public Utilities
5 Commission, we want these projects developed in
6 Minnesota. Are we doing anything that could be
7 improved on so that this doesn't happen in the
8 future, in your estimation?
9 MR. HARRIS: Yeah. Madam Chair, that's a
10 good question, and I don't know that I have fully
11 thought that through. But the language of the site
12 permits, as Commissioner Tuma noted, requires that
13 we work with local entities of government to obtain
14 the necessary permits. I think, as Commissioner
15 Tuma thinks, that that's important. But it also is,
16 you know, potentially a road block to the preemptive
17 power of the site permits.
18 I think that that's something that we can
19 think about, I think that that's something that may
20 ultimately be subject to litigation to see, you
21 know, what other authorities think about it. But I
22 think that's kind of where the -- the rub is with
23 respect to the site permit. Ultimately, this is
24 also just an issue of the ordinances that the
25 townships themselves passed and not so much one of

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1 the permits.
2 CHAIR SIEBEN: And, Mr. Harris, I
3 presume, then, these turbines, the 19 turbines or 17
4 turbines are going on to -- into townships as well,
5 and the difference there is the townships want them
6 and so are going to work with the company to
7 expedite the construction to get it in before the
8 end of the calendar year so it can meet the
9 Production Tax Credit benefits?
10 MR. HARRIS: Yeah. Madam Chair, that's
11 right. I mean, they've been receptive from a county
12 level and I believe a landowner and township level.
13 And, you know, we'll be able to construct them sort
14 of at the same time as the rest of the project both
15 in Minnesota and Iowa.
16 CHAIR SIEBEN: And did the company, was
17 Xcel -- did you consider moving these turbines to
18 within the permitted area, but in different
19 locations outside of the two -- let's just call them
20 nonparticipating townships?
21 MR. HARRIS: Madam Chair, I don't know
22 exactly what all we considered. There's a
23 difference between Iowa and Minnesota in that in
24 Iowa the turbines are sited at a county level and
25 approved at the county level, which is a quicker

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1 process than having to come back for another
2 amendment to, you know, relocate the turbines, that
3 could have taken quite some time.
4 CHAIR SIEBEN: In front of the
5 Commission?
6 MR. HARRIS: Yes, Madam Chair.
7 CHAIR SIEBEN: Yeah.
8 Commission Sullivan.
9 COMMISSIONER SULLIVAN: I have a question
10 for Mr. Harris. I'm curious, and I didn't see this
11 in the record, I did appreciate that Commissioner
12 Sieben talked about the revenue to the counties that
13 will be lost out. I'm wondering if Xcel can speak
14 to -- or if you know if there are any Minnesota
15 businesses in the supply chain that won't be
16 utilized because of the, you know, building the --
17 these 17 turbines in Iowa, so not just the county
18 and the municipal impacts, but are there Minnesota
19 jobs that are going to be lost out as well?
20 MR. HARRIS: Madam Chair, Commissioner
21 Sullivan, I don't know for sure, and maybe Matt
22 Langan can verify it, but I believe that it's still
23 planned to be the same contractor and same workers
24 for the project, just in a different location.
25 COMMISSIONER SULLIVAN: Okay.

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1 CHAIR SIEBEN: Is there any more
 2 discussion, Commissioner Sullivan, or questions?
 3 COMMISSIONER SULLIVAN: Nope, that's it.
 4 CHAIR SIEBEN: Commissioner Tuma --
 5 COMMISSIONER TUMA: I'd be curious if
 6 Mr. Langan has a response to that, 'cause I think
 7 Mr. Harris left it a little vague. So I would --
 8 I'd just prefer to confirm, in fact, what's going on
 9 as far as workers.
 10 CHAIR SIEBEN: Mr. Langan.
 11 MR. LANGAN: Madam Chair, Commissioner
 12 Tuma, thank you. Yes, Wanzek Construction is the
 13 construction contractor and we would be utilizing
 14 the same crews there, but just as Mr. Harris
 15 indicated, in a different location.
 16 COMMISSIONER SULLIVAN: Okay. Thank you,
 17 Madam Chair.
 18 COMMISSIONER TUMA: To your point about
 19 the economic development, I know for in fact
 20 Freeborn County was going to use the money generated
 21 from this particular project to be the fiscal backup
 22 for a COVID business recovery program they had in
 23 their county. And so now it's going to be impaired
 24 because of the loss of these turbines, so that's a
 25 sad situation for Freeborn County and it's sad for

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1 Minnesota, I think.
 2 COMMISSIONER SULLIVAN: I would --
 3 CHAIR SIEBEN: Commissioner Sullivan.
 4 Sorry.
 5 COMMISSIONER SULLIVAN: No, sorry.
 6 I would also add, just the businesses
 7 that won't be utilized because people won't be
 8 building the turbines in Freeborn County, you know,
 9 and that's very significant. So just worth
 10 mentioning.
 11 CHAIR SIEBEN: I don't think we have a
 12 motion on the table, Commissioner Tuma.
 13 COMMISSIONER TUMA: No, I think I
 14 accomplished what I wanted, Madam Chair. I may have
 15 a request at some point down the road to have this
 16 discussed, I'm going to discuss it with our staff,
 17 obviously, and think through this. But I do have
 18 the right to make a notice and ask for comment and I
 19 do have a right to make a motion somewhere down the
 20 line to amend this permit and I'm going to reserve
 21 that right. I don't have to come in front of the
 22 Commission like I did today to do that. And for
 23 those people that insinuated somehow I was being
 24 nefarious for doing that, I am somewhat insulted.
 25 And so, Madam Chair, I'm going to reserve

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1 that right, but at this stage I don't see a need to
 2 make a motion.
 3 CHAIR SIEBEN: Thank you, Commissioner
 4 Tuma. You are a commissioner who is always looking
 5 out for the rights of local landowners, local units
 6 of government, counties and townships to participate
 7 in our process, so I share your frustration over
 8 some of those comments.
 9 So, with that, we will move on to --
 10 let's see, it's 10:36. We will take a break now
 11 until -- is 10:45 enough time, Commissioners, before
 12 we take up agenda item number two?
 13 COMMISSIONER TUMA: Sounds good.
 14 CHAIR SIEBEN: Okay. The Commission will
 15 stand in recess, then, until 10:45 a.m.
 16 Thank you to all the participants for
 17 item number one.
 18 (Partial transcript concluded.)
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 25

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1 STATE OF MINNESOTA)
 2 COUNTY OF HENNEPIN) ss.
 3
 4
 5 REPORTER'S CERTIFICATE
 6
 7
 8 I, Janet Shaddix Elling, do hereby
 9 certify that the above and foregoing transcript of the
 10 digitally-recorded proceeding, consisting of the
 11 preceding 23 pages, is a full, true and complete
 12 transcript of the digitally-recorded proceedings to the
 13 best of my ability.
 14 Dated July 31, 2020.
 15
 16
 17
 18 /s/Janet Shaddix Elling
 19 JANET SHADDIX ELLING
 20 Registered Professional Reporter
 21
 22
 23
 24
 25

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